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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUL 13 2023

ASHOK BABU et al  
Plaintiff and Appellees  
KEENAN WILKINS  
Objector-Appellant

vs.

GREGORY AHERN, et al

Appellee(s).

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE \_\_\_\_\_  
INITIAL \_\_\_\_\_

9th Cir. Case No. 22-15275

District Court or  
BAP Case No. 5:18-CV-07677

**APPELLANT'S INFORMAL REPLY BRIEF**

(attach additional sheets as necessary, up to a total of 25 pages including this form)

**For the optional reply brief in response to appellee's answering brief(s) only.**

List each issue or argument raised in the answering brief to which you are replying. Do not repeat arguments from your opening brief or raise new arguments except in response to arguments made in the answering brief(s).

**Issue/Argument Number 1**

What is the first argument in the answering brief to which you are replying?

CONCESSION

Appellees present argument in their answering brief asserting that Appellant lacks standing to challenge the parties settlement agreement in this action, but they wholly failed to argue against Appellant's claims.

What is your reply to that argument?

Appellant contends that Appellees' failure to argue against his presented claim that clear evidence in other active pending prison litigation demonstrates that they are woefully unable to represent incarcerated persons in this action or act in our best interest constitutes concession to the argument ( Tapia v Wells Fargo Bank 2015 US Dist Lexis 102836; Silva v. US BankCorp 2011 US Dist Lexis 152817; Duensing v Gilbert 2013 US Dist Lexis 47649 ).



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**Issue/Argument Number 2**

What is the second argument in the answering brief to which you are replying?

Appellees erroneously contend that Appellant Keenan Wilkins has lack of standing to challenge the parties settlement.

What is your reply to that argument?

Clear evidence demonstrates that Appellees do err.

First, as repeatedly pled ( See Appellees Denied Motion To Dismiss )  
Appellant disclosed that he was, "... a class member because I anticipate soon being returned to Santa Rita in the near future for resentencing  
(Please see Issue/Argument Number 2 Addendum )

**Issue/Argument Number 3**

What is the third argument in the answering brief to which you are replying?

Appellees erroneously contend that Non. Magistrate Nathanael correctly approved the consent decree and failed to demonstrate abuse of discretion.

What is your reply to that argument?

Appellant asserts that Appellees argument lacks merit and moreover, fails to properly address the issues raised by Appellant et al in regards to this claim. Appellees contentions fail to state/show HOW the Honorable Magistrate provided REASONABLE responses to every non-frivolous presented objection. For instance, Appellant raised the gross ineffective assistance  
( Please See Issue/Argument Number 3 Addendum )

Keenan Wilkins

Name  
California Health Care Facility

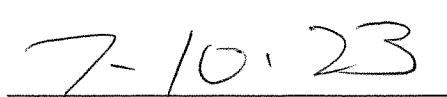
P.O. Box 213040

Stockton, CA 95213

Address



Signature



Date



ISSUE /ARGUMENT NUMBER 1

Addendum 1 of 1

Appellees have presented absolutely no argument against  
Appellants opening brief allegations with evidence of GROSS  
ineffective assistance of counsel in currently active  
prisoner litigation class actions such as Coleman v Newsom  
2-90-cv-0520 KJM DB, Plata v. Newsom 01-cv-1351 JST,  
Armstrong v Newsom 4-94-cv-2307 CW.

These cases have been ongoing for years under the representation of ROSEN and have not made circumstances better for class members at all and in some cases, the unconstitutional conditions have worsened.

The most telling example of gross ineffective representation by ROSEN is found in Coleman, Supra in which despite being clearly informed by classmembers that CDCR was FALSIFYING group attendance times--ROSEN disregarded the information and aligned with CDCR to end the class monitoring and receivership with the FALSE DATA. The receivership would have ended if not for the courageous actions of whistleblower Michael Golding. This factual information, in addition to other pertinent facts such as the death of numerous class members at California Health Care Facility as a direct result of CDCR officials, allowed by ROSEN, to violate the stipulated court order for quarantine and isolation during the height of the Covid-19 pandemic was untested by Appellees in their answering brief and are deemed CONCEDED ( Tapia, Supra; Silva, Supra; Duensing, Supra ).

As such this gross ineffective representation precludes the grant of yet ANOTHER prisoner class settlement in which ONLY ROSEN will benefit from millions in attorney fees.



ISSUE/ARGUMENT NUMBER 2

Addendum 1 of 2

1 pursuant to post conviction relief efforts and penal code

2 1170(d) ....".

3 Appellees have disputed this fact with nothing more

4 that baseless conjecture. In addition to the presented

5 facts of Appellant of his forthcoming return to Santa Rita

6 Jail for resentencing proceedings, he presents also with

7 this Reply Brief a request for the Court to take judicial

8 notice of letter dated September 29, 2022 from Deputy

9 Attorney General Anne Kammer (Attorney for CDCR Defendants)

10 in which she states, "....I inquired regarding your eligi-

11 bility for CDCR's Recall and Resentencing Referral Program.

12 I was advised that you are eligible and, on August 23, 2022,

13 CDCR sent the Coviction Review Team at the Alameda District

14 Attorney's Office documentation to support a request for

15 resentencing under California Penal Code 1170....".

16 Appellant contends that this evidence places him in the

17 "Future Class Member" category asserted in the Consent Decree

18 dated 12-17-21.

20 Further, Appellees failed to object to Appellants

21 participation in the district court, where he did infact

22 participate and have one of his objections ordered by the

23 court to be addressed by Appellees ( See District Court

24 Order dated 1-24-22 Question 8 ---concerns with ROSEN ineffe-

25 ctive assistance in currently active prisoner class cases ).

26 The 9th Circuit has established that a parties failure

27 to object before the district court waives the argument

28 (Dutta v. State Farm Mut Auto Ins. Co. 895 F.3d 1166 9th Cir.



ISSUE/ARGUMENT NUMBER 2

Addendum 2 of 2

1 2018; Getz v. Boeing Co. 654 F.3d 852 9th Cir. 2011;

2 Marbled Murrelet v. Babbitt 83 F.3d 1060 9th Cir 1996 ).

3  
4 Appellant asserts that if by chance the foregoing facts  
5 are not found plausible to extinguish Appellees lack of  
6 standing argument---then an additional factor also remains--  
7 the " EXCEPTIONAL CIRCUMSTANCES " clause established by this  
8 circuit.

9 The 9th Cir. has established that it will hear a NON-

10 PARTY appeal in exceptional circumstances, which are :

11 (1) When the Appellant though a non-party, participated in  
12 the district court proceedings; and  
13 (2) When the equities of the case weigh in favor of hearing  
14 the appeal ( Hilao v. Estate of Marcos 393 F.3d 987 9th  
15 Cir. 1991 ).

16  
17 Here, as evidence demonstrates, Appellant participated  
18 in the District Courts " Objection " proceedings from  
19 beginning to end. Appellant contends that the equities  
20 of the case weigh in favor of allowing him to participate in  
21 the appeal as he is currently a class member of ROSEN in  
22 several cases in which ROSEN has demonstrated GROSS IAC on  
23 behalf of the class members for years. Appellant also was  
24 subjected to the SAME terrible unconstitutional conditions  
25 at Santa Rita Jail for SIX YEARS(2007-2013) which resulted  
in settlement ( Wilkins v Ahern C08-1084 MMC ). County ofi-  
cial did not keep their word then nor over the last near 2  
decades and competent representation is now needed who have  
the best interest of class members and our well being.



ISSUE/ARGUMENT NUMBER 3

Addendum 1 of 1

in his objections below in the district court and on 1-24-22  
the Court issued an oreder for Appellees to respond to 11  
questions. Question 8 of the order was a direct result of  
Appellant's objections and stated, "... Objectors pointed  
to the Coleman v. Newsom settlement as an example of an  
instance where ACSO and Class Counsel did not meet their  
implementation obligations....Can class counsel address this  
concern?...".

However in the Court's order dated 2/7/22 granting  
Appellees Final Approval of the Consent Decree and Attorneys  
Fees, The Court itemized 8 objections that it took into  
consideration from objectors ( See District Court Document  
Page 5 line 15 to page 7 line 20 ). Missing from these  
itemized factors of consideration is Appellants Objection  
and Appellants response thereto. Appellant asserts that  
this demonstrates that the Magistrate failed to provide a  
reasonable response to EVERY NON-FRIVOLOUS objection and con-  
stituted an abuse of discretion in the failiture to consider  
this objection in making it's final approval and grant of  
the consent decree ( Dennis Kellogg Co. 697 F.3d 858,864 9th  
Cir. 2012; Officers For Justice, 688 F.3d 615 9th Cir 1982).

As a result of this failure to provide a response to  
non-frivolous presented objection, Appellant respectfully  
contends that error was committed warranting reversal for  
explicit consideration of ROSENS gross IAC in active current  
prisoner class acction cases as presented to the district  
court in objections.

